

# Emerging Trends in Consumer Law

Finance Issues for Seniors  
Lea Wroblewski, JD





## Emerging Trends

- Using Court to Collect Money
- Co-Signing Loans
- Student Loans
- Bankruptcy and Reverse Mortgages



## Using Court for Debt Collection in Nebraska

- This is a HUGE and PROFITABLE business in Nebraska
- Most Defendants are unrepresented by an attorney
- If you don't file an answer to the lawsuit, then the court will enter a judgment against you
- If you do file an answer to the lawsuit, then you will have confusing paperwork and multiple court dates to deal with
- 79,000 collection lawsuits were filed in Nebraska in 2013
  - Medical bills can be bundled by collection agencies into one lawsuit
  - Debt buyers purchase defaulted credit card accounts

*"So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine," by Paul Kiel, ProPublica, May 5, 2016*



### PART III WRITTEN INTERROGATORIES

#### A. Instructions for Interrogatories.


Plaintiff requests answers by Defendant to the written Interrogatories required by Nebraska Court Rules of Discovery in Civil Cases §6-333. Objecti

for judgment against the Defendants and each of them, in the amount of \$162.01 judgment interest, attorney's fees if applicable, and post-judgment interest as

in courtroom 21  
on 1/22/2016  
at 08:30 AM

Judgment Debtor to give testimony under oath regarding property subject to execution.

**Failure to appear may result in a warrant being issued for the judgment debtor's arrest.**

Date: December 8, 2015 BY THE COURT:   
Hon. Thomas

If you have questions, contact

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: MAY 24, 2016

BY THE COURT:

  
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE



## Post-Judgment Debt Collection

- Wage Garnishment
  - Your turnip may have a job!
- Bank Account Garnishment
  - Federal Banking Regulations protect Social Security and other government benefits
  - Don't co-mingle!
  - If the account is frozen, contact Legal Aid for help filing an exemption.
- Executions on Personal Property
- Debtor's Examinations
  - Appear in court (or the hallway) or you will go to jail!



## Responding to Debt Collection

- Owing the Money v. Paying the Money
- Court is:
  - Confusing
  - Intimidating
  - Disempowering



## What type of debt is it?

- Student loans or taxes?
- Secured or unsecured?
- Co-signer?
- Judgment or collection agency?



## What type of income is it?

- Social Security or other retirement benefit?
- Any additional deposits in the bank account?



## What assets are there?

- House?
- Vehicles?
- Other?
- Do state or federal exemptions apply?

## What is the budget?

- Is it realistic?
- Can they afford to repay the debt?
- What are the consequences of not repaying the debt?

## Helping Turnips

- Bankruptcy is not necessary
- Make sure assets are not comingled in the bank account
- Respond to court paperwork if needed and ignore it otherwise
- Describe the collection system that they are involved in
- Review their budget and help them come to the conclusion that they can't pay the debt – I like to call it “prioritizing debt.”

## Name a reason why someone would co-sign a loan for someone?

- Guilt
- Love
- Confusion
- Desire to help
- Trust
- We are family!



## Student Loans

- Is it a PLUS loan or a private student loan?
- PLUS loan liability continues for the parent after the student's death
- May limit the repayment plan options available
- The US Department of Education can garnish Social Security to pay back a PLUS loan.

## Automobile Loans

- Late payments adversely affect credit
- On-time payments minimally improve credit
- Repossession is possible if payments are late
- Deficiency after the automobile auction is likely
- May result in a judgment against the borrower and co-borrower

## Home loan

- Late payments adversely affect credit
- On-time payments minimally improve credit
- Foreclosure is possible if payments are late

## Bankruptcy and Co-Debtors

- Automatic stay only applies to the debtor who files Chapter 7 bankruptcy
- Automatic stay applies to both parties in a Chapter 13
- Creditor can still collect from the co-debtor (debt only discharges for the person who filed bankruptcy)



"Sure, as a young man I had dreams:  
fame, adventure...paying off my student loans..."

## Student Loan Debt

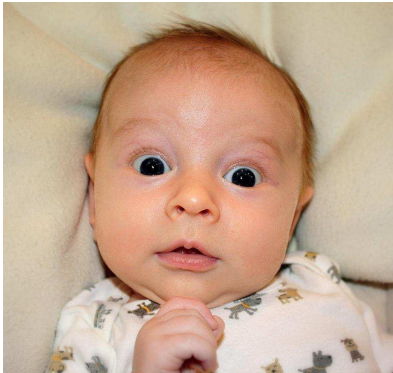
- 706,000 households headed by 65 year olds have \$18.2 million dollars in student loan debt
- Average loan balance for those 50-59 is \$23,183
- Average loan balance for those 60-69 is \$19, 225
- 600% increase in the last 12 years
- 25% of loans held by 65-74 year olds are in default

## Social Security Garnishment

- The US Supreme Court says it's ok!
- In 2000 there were 6 Americans who had their Social Security checks garnished
- In 2006, there were 47,500 Americans who had their Social Security checks garnished
- Lockhart v. United States, et. al., 546 U.S. 142 (2005)
- In 2013, there were 156,000 Americans who had their Social Security checks garnished

## Social Security Garnishment

- The US Federal Government can take 15% of Social Security, but must leave the recipient with \$750
- Average Social Security check is \$1200 and the typical amount taken for a student loan garnishment is \$180



## Disability Discharge

- VA Determination of disability
- SSDI or SSI award letter showing that your next review is in 5-7 years
- Physician's Statement that you are totally and permanently disabled
  - Can result in death
  - Has lasted not less than 60 months
  - Can be expected to last for not less than 60 months

### Physician's Certification

- I **certify** that, in my best professional judgment, the applicant identified above is unable to engage in any substantial gainful activity in *any* field of work by reason of a medically determinable physical or mental impairment that **(1)** can be expected to result in death; or **(2)** has lasted for a continuous period of not less than 60 months; or **(3)** can be expected to last for a continuous period of not less than 60 months.
- I **understand** that an applicant who is currently able to engage in any substantial gainful activity in *any* field of work does not have a total and permanent disability as defined on this form.

I am a doctor of (check one) ☐ medicine ☐ osteopathy/osteopathic medicine.

I am legally authorized to practice in the state identified below and I have provided my professional license number below.

## Repayment

- Income Based Repayment – 10-15% of your discretionary income
- Income Contingent Repayment – 20% of your discretionary income
- Income Sensitive Repayment – based on annual income

[studentaid.ed.gov](http://studentaid.ed.gov) – How do I manage my loans?



"I want a reverse mortgage. Take me back to when I didn't have one."

## Reverse Mortgage

- Must be 62 or older
- Must have significant equity

## Outcome of Reverse Mortgage

- Money as a fixed, monthly distribution or a one-time lump sum, or an equity line of credit
- No more house payments!

## Is it "safe" to file bankruptcy if I owe other bills?

- Probably
- Is there equity after the lien?
- Is there an ipso facto clause?





## Property Taxes and Property Insurance

- Required by reverse mortgage
- Can lead to foreclosure
- Can be cured through a Chapter 13 bankruptcy



## What should I do if I have a reverse mortgage and I can't pay my property taxes or insurance?

HCEM foreclosure prevention counseling:

- National Council on the Aging: 800-510-0301
- CredAbility: 888-395-2664
- Money Management International: 866-765-3328
- National Foundation for Credit Counseling: 866-363-2227
- NeighborWorks America: 888-990-4326

